

RESTRICTIVE COVENANT

OWNER: HyWhite LLC, an Indiana limited liability company

ADDRESS: 1000 East 80th Place North, Suite 700, Merrillville, IN 46410

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: Lots 7, 8, and 9, Block 17, Original City of Austin, as more particularly described in the map or plat on file in the General Land Office of the State of Texas.

WHEREAS, the Owner (the "Owner", whether one or more) of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. The Owner shall design and construct streetscape improvements in compliance with the City of Austin Great Streets design criteria. Design, permitting and construction of streetscape improvements will be at Owner's expense. The Owner shall coordinate the design of the streetscape improvements with the Urban Design Section of the Planning and Development Review Department. The Urban Design Section shall inspect and approve the streetscape improvements prior to issuance of a certificate of occupancy.
2. Owner agrees to cost participate for traffic improvements identified in the memorandum from the Transportation Review Section of the Planning and Development Review Department, dated October 12, 2009 and attached to this covenant as Exhibit "A".
3. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
4. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
5. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

6. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the _____ day of _____, 2009.

OWNER:

**HYWHITE, LLC,
an Indiana limited liability company**

By: White Lodging Services Corporation,
an Indiana corporation

By: _____
Lawrence E. Burnell,
Chief Operating Officer

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

THE STATE OF INDIANA §

COUNTY OF _____ §

This instrument was acknowledged before me on this the _____ day of _____, 2009, by Lawrence E. Burnell, Chief Operating Officer, of HyWhite, LLC, an Indiana limited liability company, on behalf of the company.

Notary Public, State of _____

My Commission Expires: _____

After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767-1088
Attention: Diana Minter, Paralegal



Date: October 12, 2009 (Revised)
To: Clark Patterson, Case Manager
CC: Leslie Stengele, P.E., HDR|WHM Transportation Eng
Reference: 3rd and San Jacinto Quarter Block Rezoning (C14-2009-0091) TIA Waiver

The proposed rezoning is located at the southwest corner of 3rd Street and San Jacinto Blvd. The applicant has requested a zoning change to CBD – CURE.

The land development code requires a traffic impact analysis (TIA) to be submitted for developments, which are projected to generate greater than 2,000 vehicle trips per day. The proposed 276-room hotel development will generate an estimated 2,462 trips. The TIA for this site was waived because the applicant agrees to pay a pro-rata share of improvements identified in the TIA performed with the zoning case C14-2007-0092.

Staff has reviewed the fiscal estimates dated August 4, 2009, prepared by Leslie Stengele of HDR|WHM Transportation Engineering.

RECOMMENDATIONS

1. Prior to any site plan or subdivision approval for this property, pro-rated share of fiscal for transportation improvements as listed below is required to be posted:

Recommended Improvements				
Intersection	Improvement	Cost	Pro Rata Share %	Pro Rata Share \$
3rd St & San Jacinto Blvd	Install traffic Signal	\$145,000	15%	\$21,750
	Re-stripe WB to provide one left turn lane and one through lane	\$1,730	15%	\$259
3rd St & Brazos St	Install traffic Signal	\$145,000	9%	\$13,050
	Re-stripe EB to provide one left turn lane and one through lane	\$1,730	9%	\$156
TOTAL		\$293,459		\$35,215

2. The development should be limited through a conditional overlay to 2,462 vehicle trips per day.
3. Any changes to the land uses, trip generation, or agreed improvements will require approval from the City of Austin Planning and Development Review Department.

If you have any questions or require additional information, please contact me at 974-2219.

Sangeeta Jain, AICP
Senior Planner, Planning and Development Review